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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/002,522	11/13/2001	Gerald Lebizay	42390P12364	4266

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EXAMINER

HARRELL, ROBERT B

ART UNIT	PAPER NUMBER
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2142

DATE MAILED: 11/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/002,522	LEBIZAY ET AL.	
	Examiner	Art Unit	
	Robert B. Harrell	2142	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11/13/2001 et seq.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-86 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-86 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 November 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>20020513-20030612</u> . | 6) <input checked="" type="checkbox"/> Other: <u>see attached Office Action</u> . |

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1. Claims 1-86 are presented for examination.
2. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.
3. The applicant should use this period for response to thoroughly and very closely proof read and review the whole of the application for correct correlation between reference numerals in the textual portion of the Specification and Drawings along with any minor spelling errors, general typographical errors, accuracy, assurance of proper use for Trademarks TM, and other legal symbols, where required, and clarity of meaning in the Specification, Drawings, and specifically the claims. Minor typographical errors could render a Patent unenforceable and so the applicant is strongly encouraged to aid in this endeavor.
4. The following is a quotation of 35 U.S.C. 101 that reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

5. Claims 40-44 and 66-76 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Specifically, the claimed "data structure", even if embodied on a computer readable medium, is recited more so as an Abstract Idea manifested as non-functional descriptive material, rather than functional descriptive material normal with data structures, formulated as a compilation or mere arrangement of Raw Data having no direct, or indirect, effect on any statutory element or thing under the Sun thus imparting no functionality.

6. The following is a quotation of the second paragraph of 35 U.S.C 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 1-86 are rejected under 35 U.S.C 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention. The scope of meaning of the following claim language is not clear:

- a) "the maximum size"--claims 5, 8 (line 3);
- b) "the maximum packet size" – claim 31 (lines 3-4), claim 48 (line 3);
- c) "the maximum length" – claim 44 (line 2).

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8. As to 7 (a-c) above, these are but a few examples of numerous cases where clear antecedent bases are lacking and not an exhausting recital. Any other term(s) or phrase(s) over looked by examiner and not listed above which start with either "the" or "said" and do not have a single proper antecedent bases also is indefinite for the reasons outlined in this paragraph. Also, these are but a few examples where term(s) or phrase(s) are introduced more than once without adequate use of either "the" or "said" for the subsequent use of the term(s) or phrase(s). Moreover, multiple introduction of a term, or changes in tense, results in a lack of clear antecedent bases for term(s) or phrase(s) which relied upon the introduced term. Failure to correct all existing cases where clear antecedent bases are lacking can be viewed as non-responsive.

9. Claims 4, 17, 30, and 80 (as examples) contain the trademark/trade name InfiniBand®. Where a trademark or trade name is used in a claim as a limitation to identify or describe a particular material or product, the claim does not comply with the requirements of 35 U.S.C. 112, second paragraph. See *Ex parte Simpson*, 218 USPQ 1020 (Bd. App. 1982). The claim scope is uncertain since the trademark or trade name cannot be used properly to identify any particular material or product. A trademark or trade name is used to identify a source of goods, and not the goods themselves. Thus, a trademark or trade name does not identify or describe the goods associated with the trademark or trade name. In the present case, the trademark/trade name is used to identify/describe an Ethernet network and, accordingly, the identification/description is indefinite.

10. Per claims 1, 14, 27, 40, 45, 49, 66, and 77, and their dependent claims, more so, in all pending claims 1-86, it cannot be clearly ascertained if the four segment IDs are, in combination, aligned onto a single eight-byte boundary, or in a manner efficient for operating on a processor, or if each individual segment ID is aligned onto an individual eight-byte boundary or other efficient boundary. That is, given any eight-byte cell or efficient length cell, is there a single eight-byte cell, or efficient boundary cell, with all four segment ID therein, or four eight-byte cells, or efficient length cell, each cell having only one of the segment IDs?

11. All claims use, implies, or inherent "byte". How big is a byte? The byte size in bits cannot be clearly ascertained within the claims, as a "byte" need not be bit size restricted but rather is smaller in size than a word of the machine (i.e., a 64-bit machine would have a 64-bit word with a byte of any bit size less than 64-bits (i.e., 32 bits)). Conventionally, a byte implies 8-bits as a standard, but page 9 (line 4 "8-bit words") implies a byte less than 8-bits. Thus examiner is unable to ascertain the bit size of the claimed bytes. With no clear definition of the bit size of a byte (in view of page 9 (line 4 "8-bit words") and page 16 (lines 5-6)), byte has no relevant value in the claims or specification. Thus is the byte to be gauged per page 9 (line 4) (less than 8-bits) or page 16 (lines 5-6) (8-bits)?

12. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this action:

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A person shall be entitled to a patent unless -

(e) the invention was described in — (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for the purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language;

13. Claims 1-86 rejected under 35 U.S.C. 102 (e) as being anticipated by Rosenberg (US 6,304,567 B1).

14. Prior to addressing the grounds of the rejections below, should this application ever be the subject of public review by third parties not so versed with the technology (i.e., access to IFW through Public PAIR (as found on <http://portal.uspto.gov/external/portal/pair>)), this Office action will usually refer an applicant's attention to relevant and helpful elements, figures, and/or text upon which the Office action relies to support the position taken. Thus, the following citations are neither all-inclusive nor all-exclusive in nature *as the whole of the reference is cited* and relied upon in this action as part of the substantial evidence of record. Also, no temporal order was claimed for the acts and/or functions, nor the bit size of a byte defined in the whole of this application thus the conventional 8-bit byte is assumed by default.

15. Per claim 1, Rosenberg taught a method (e.g., see Title) comprising:

- a) receiving a data segment representing a digitized segment of voice data associated with a voice channel (e.g., see Abstract);
- b) assigning a unique segment ID to the voice channel associated with the digitized segment of voice data (e.g., see col. 2 (line 40) and col. 6 (lines 32-38)); and,
- B) arranging a set of four segment IDs and a corresponding set of four data segments into a quad segment so that the four segment IDs and each of the four data segments are explicitly aligned on an eight-byte boundary (e.g., see figure 5 and col. 8 (lines 9-42)).

16. With respect to figure 5, the "E" bit may or may not be set per col. 8 (line 28). Thus, it was anticipated by those skilled in the art to have a scenario where the third "E" is not set in PT=8 byte Blocks thus resulting in an arrangement of a set of four segment IDs and a corresponding set of four data segments into a quad segment so that the four segment IDs and each of the four data segments were explicitly aligned on an eight-byte boundary per figure 5 with Blocks 1-4 and their corresponding channel number segment ID.

17. Per claims 2, 3, 4, 10, and 11 see Abstract where the "Internet" is/was a global collection of MAC based Ethernet LANs (such as InfinBand®), ATM networks, WANs, MANs, and other such related networks each requiring associated headers to encapsulate the payload of the data packet shown in figure 5 and also col. 4 (lines 19-52).

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18. Per claim 5, col. 6 (line 59-et seq.) stated the frames could be of different size as further enumerated in col. 8 (line 9-et seq.). Hence the frame of figure 5 was formatted to fit within the size of the network.

19. Per claims 6, 7, and 8, see col. 4 (line 28) and col. 6 (lines 45-51).

20. Per claim 9, see figure 2A (element 203).

21. Per claim 12, see col. 2 (line 38).

22. Per claim 13, figure 5 (302) shows 16 bits per col. 8 (line 27); that is two 8-bit bytes. Thus, E|M|PT|ID (as a whole) was a unique segment ID per Block (304) with E and M each 1-bit in size, PT was 6-bits, and ID being 8 bits for a total of 16 bits, or two 8-bit bytes.

23. Per claims 14-86, these claims do not teach or defined above the correspondingly rejected claims given above, and are thus rejected for the same reasons given above. Specifically, since the Rosenberg's Title implemented a method, a program to carry out such a method was anticipated to be transported on a computer readable medium to transform a conventional computer into a uniquely specific apparatus of the type having the same or equivalent corresponding structure (as shown in figures 1-2A) and acts of figures 2B using the data structure of figure 5 that facilitated the most efficient operation on any sized processor(s) of figure 2A for the digitized segment of analog data over a telephone line (conventional voice or fax went over phone lines) representing a voice data of a voice channel.

24. A shortened statutory period for response to this action is set to expire 3 (three) months and 0 (zero) days from the date of this letter. Failure to respond within the period for response will cause the application to become abandoned (see MPEP 710.02, 710.02(b)).

25. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert B. Harrell whose telephone number is (571) 272-3895. The examiner can normally be reached Monday thru Friday from 5:30 am to 2:00 pm and on weekends from 6:00 am to 12 noon Eastern Standard Time.

26. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jack B. Harvey, can be reached on (571) 272-3896. The fax phone number for all papers is (703) 872-9306.

27. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-9600.

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A handwritten signature in black ink, appearing to read 'R. B. Harrell', written in a cursive style.

ROBERT B. HARRELL
PRIMARY EXAMINER
GROUP 2142